TAN TENG PAN v. WONG FOOK SHANG

[O.C.J. (Yong J.) October 9, 1972]

[Kuala Lumpur — Originating Summons No. 133 of 1972]

Land Laws — Sale of land — Order of — Jurisdiction — Whether court has, where land held under land office title — National Land Code, ss. 260 & 261(1).

The chargee in this application sought for an order of sale of land held under E.M.R. in the Mukim of Klang for the recovery of the sum of $6,000 due by the chargor to the chargee under a charge presentation which was duly registered by the Collector of Land Revenue, Klang.

The question was whether the court had jurisdiction to entertain the application when the land in question was land held under a land office title.

Held: in view of the provisions of sections 260 & 261(1) of the National Land Code, the court had no jurisdiction to entertain the application.

ORIGINATING SUMMONS.

Teh Eng Choon for the chargee-applicant.

Respondent in person.

Yong J.: This is an application by a chargee for an order of sale of the land held under E.M.R. (Entry Mukim Register) No. 8048 for lot 6611 in the Mukim of Klang for the recovery of the sum of $6,000 due by the chargor to the chargee under a charge presentation No. 1206, Volume XXX Folio 87 which was duly registered by the Collector of Land Revenue, Klang.

The question is: Has this court jurisdiction to entertain this application when the land is land held under a Land Office title. Sections 260 and 261(1) of the National Land Code 1965 read: —

"260. (1) This section applies to land held under —

(a) Land Office title or

(b) the form of qualified title corresponding to Land Office title,

and to any lease of any such land.

(2) Any application for an order of sale under this Chapter by a chargee of any such land or lease shall be made to the Collector in Form 16G."

"261. (1) Upon receiving any application under sub-section (2) of section 260, the Collector shall —

(a) appoint a time and place for the holding of an enquiry with respect thereof;

(b) notify the chargee of the time and place so appointed; and

(c) cause a summons to be served on the chargor, requiring him to appear at the enquiry and show cause why the order should not be made."

In view of these provisions I hold that this court has no jurisdiction to entertain this application which should have been made to the Collector of Land Revenue, Klang. This application is accordingly dismissed.

Application dismissed.

Solicitors: *S. Y. Chan & Co.*

DEL E. WEBB INTERNATIONAL HOTEL CO. v. HOTEL MERLIN PENANG SDN. BHD.

[O.C.J. (Chang Min Tat J.) October 12, 1972]

[Penang — Civil Suit No. 222 of 1972]

Practice and Procedure — Consolidation of actions — R.S.C. 1957, O. 49 r. 8(1).

This was an application by the defendants under the provisions of O. 49 r. 8(1) of the Rules of the Supreme Court for consolidation of this action with another instituted in Kuala Lumpur.

The plaintiffs are an American company having for its main object or one of its main objects the provision of hotel-expertise. They entered into agreements with various owners of hotel-buildings in many countries for running these hotels at a remuneration and for a stated term. These hotels though belonging to different owners should constitute or be seen to constitute a chain with presumably intimate connections with one another, so that a visitor to the Hotel Merlin in Kuala Lumpur would naturally gravitate to the Hotel Merlin in Penang on a visit to the latter place. The procedure then developed for these owners to turn themselves into companies, each known under the common name of Merlin but which constitute separate juridicial entities. The contract of management was in each case identical almost to the letter, and in point of fact had been described by one of the plaintiff company's officers as a package deal.

A term of the agreement was that the right of rescission on 6 months notice by either side was deferred for 5 years after November 1, 1970, but insofar as the Penang action was concerned, it was terminated by notice dated August 11, 1972 before the expiry of the 5 years period, and served the following day with almost immediate effect. The statement of claim averred that the termination was without just cease and in breach of the agreement and that consequent on the termination, the defendants had unlawfully taken over the management and operation of the hotel.

The defendants' secretary in his affidavit alleged that the termination was for breaches of the contract by the plaintiffs and for misrepresenting themselves as experts in hotel business which, it was alleged they were not, in view of the mass of evidence purported to have been uncovered of their incompetence and that of their agents or servants and that this misrepresentation or lack of the skill they held themselves out to possess was a fundamental breach of the implied term of the contract. The defendants claimed thereby to be entitled to bring the contract to an end before the stipulated time. In support of the application for consolidation, he averred that the writs of summons and statements of claim in both the Penang and the Kuala Lumpur actions were identical. He made the further point that without consolidation there would be unnecessary duplication of work.

Held: (1) an examination of the claim and the averments in the affidavits in this case showed that the actions in Kuala Lumpur and in Penang were between the same plaintiffs and substantially the same defendants, though of different legal entities and what was more important, involved a common question of facts;

(2) in the circumstances this was a case eminently suitable for consolidation with the Kuala Lumpur action within the scope and intent of O. 49 r. 8.

Cases referred to:-

(1) *Horwood* v. *Statesman Publishing Co. Ltd.* (1929) 98 L.J.K.B. 450, C.A.

(2) *Daws* v. *Daily Sketch & Sunday Graphic Ltd. & Anor., etc.* [1960] 1 All E.R. 397.

(3) *Dominion Trust Co.* v. *New York Life Insurance Co., Dominion Trust Co.* v. *Mutual Life Assurance Co. and Dominion Trust Co.* v. *Sovereign Life Assurance Co.* [1919] A.C. 254.

(4) *Khalid Panjang & Ors.* v. *Public Prosecutor (No. 2)* [1964] M.L.J. 108.